

**TAX CREDIT ASSISTANCE PROGRAM AGREEMENT BY AND BETWEEN  
ARKANSAS DEVELOPMENT FINANCE AUTHORITY AND**

---

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Arkansas Development Finance Authority (hereafter designated as "ADFA") and \_\_\_\_\_ (hereafter designated as "Owner").

**WHEREAS**, on June 24, 2009, ADFA received Tax Credit Assistance Program (hereafter designated as the "TCAP Program") funding (hereinafter "TCAP Funds") from the United States Department of Housing and Urban Development (hereinafter designated as "HUD"); and

**WHEREAS**, Owner has evidenced the capacity to construct (acquire and rehabilitate) an affordable housing Development, named "\_\_\_\_\_", (hereafter "the Development") funded in part by this Agreement, located at:

\_\_\_\_\_

\_\_\_\_\_

**WHEREAS**, pursuant to Section 42(h) of the Internal Revenue Code, Owner received an award of annual federal low-income housing tax credits on May 17, 2007 (May 15, 2008) (September 10, 2009) (September 17, 2009) in the amount of \$\_\_\_\_\_ for the construction (acquisition/rehabilitation) of the Development consisting of a total of \_\_\_\_\_ (\_\_\_\_) housing units, of which \_\_\_\_\_ (\_\_\_\_) will be income-restricted and rent-restricted pursuant to Section 42 of the Internal Revenue Code ("IRC"). "Award" is defined, for purposes of this Agreement, as the ADFA Board of Directors' public announcement that the Development has been selected as eligible to receive an allocation of federal low-income housing tax credits.

**WHEREAS**, Owner applied on \_\_\_\_\_, 2009, for TCAP Funds as a financing source for the Development. On September 10, 2009, the ADFA Board of Directors awarded Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in TCAP Funds to construct (acquire and rehabilitate) (rehabilitate) \_\_\_\_\_ (\_\_\_\_) multi-family units for rent, of which \_\_\_\_\_ (\_\_\_\_) will be income-restricted and rent-restricted pursuant to Section 42 of the IRC and otherwise subject to all restrictions set forth by 26 USC Section 42 and accompanying legislation, including but not limited to all applicable regulations, revenue rulings, revenue procedures, and all further restrictions agreed to by Owner.

**NOW THEREFORE**, ADFA and Owner hereby execute this Agreement to undertake the described affordable housing Development.

**FURTHERMORE**, ADFA and Owner agree as follows:

## I. SCOPE OF SERVICE

A. (i) Owner shall complete the construction (acquisition and rehabilitation) (rehabilitation) of \_\_\_\_\_ (\_\_\_\_\_) multi-family rental units located at \_\_\_\_\_, Arkansas, more particularly described in **Exhibit A** (hereinafter the “Development”). \_\_\_\_\_ (\_\_\_\_\_) of the \_\_\_\_\_ (\_\_\_\_\_) units will be tax credit-qualified units and will accordingly be reserved for low-income tenants who are income eligible and otherwise eligible under Section 42 of the IRC; and

(ii) All such reserve units will comply with all applicable rent restrictions.

B. Owner shall construct (acquire and rehabilitate) (rehabilitate) the \_\_\_\_\_ (\_\_\_\_\_) multi-family units identified above to standards required in Section V of this Agreement in conformance with all representations made by Owner and Owner’s architect.

C. \_\_\_\_\_ (\_\_\_\_\_) units in the Development will be Section 504 accessible.

D. \_\_\_\_\_ (\_\_\_\_\_) units will be Energy Star qualified units.

E. Owner shall affirmatively market the affordable housing units for rent to eligible tenants.

F. Owner certifies that the Development was not placed in service prior to 2009, except for any placement-in-service arising from the acquisition of a building or buildings to be rehabilitated as part of the Development.

G. Owner elects the following minimum set-aside election:

☐ At least 40% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 60% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC

**OR**

☐ At least 20% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 50% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC

Including the requisite number of units to meet the minimum set-aside elected above, Owner commits to reserve the following number of units in the Development for the indicated income level:

	30%	50%	60%	Unrestricted	Manager/	Total
	AMI	AMI	AMI	(Market rate)	Employee	Units
Number of					Units	
Units						

H.. The term “Section 42 of the IRC,” throughout this Agreement, shall mean 26 USC Section 42, all amendments thereto, all regulations promulgated there-under and all guidance issued by the Internal Revenue Service, Department of Housing and Urban Development, and the U.S. Department of Treasury.

I. Owner must comply with the Qualified Allocation Plan that was in effect in the year that Owner was awarded federal low-income housing tax credits; however, if Owner has returned tax credits in exchange for an allocation of 2009 tax credits and/or Section 1602 funds, the 2009 Qualified Allocation Plan is applicable and controlling.

J. (i) Owner shall not make a request for payment, *i.e.* “Draw Request,” of TCAP Funds for payment of any costs incurred at any time prior to the occurrence of both the pre-construction conference and ADFA’s issuance of a Notice to Proceed. Owner shall request payment from the awarded TCAP Funds only for costs certified as constituting “eligible costs”, including, but not limited to costs of land acquisition, on-site demolition costs, and hazardous material remediation costs, as defined by TCAP legislation, Section 42 of the IRC, regulations and agency guidance (hereinafter “eligible costs”).

(ii) For purposes of determining eligible costs under this Agreement “Eligible basis” does not include the increase in basis (commonly referred to as the 30% “basis boost”) allowed pursuant to Section 42(d)(5) of the IRC. Eligible costs do not include any costs expended on any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

(iii) With each Draw Request, Owner shall provide to ADFA: (1) original receipts and invoices for all eligible costs incurred or expended for which payment is sought; (2) a cost certification of eligible costs, prepared and certified to Owner, its Certified Public Accountant or attorney, (3) written statement of inspection by Owner’s construction lender or, if no construction lender, the most recent inspection report prepared by an authorized representative of ADFA or thirty party construction monitor; and (4) a “Jobs Reporting” form. ADFA will provide the “Draw Request” and “Jobs Reporting” forms that are to be completed and submitted by Owner.

(iv) Payment by ADFA of TCAP Funds in response to a Draw Request does not in any way constitute a finding by ADFA that the submitted costs constitute “eligible costs” nor does such disbursement constitute a waiver of ADFA’s right to seek repayment of the disbursed amount, in whole or in part, in the event that the costs, or any part of the costs, are at any time deemed to not constitute eligible costs or otherwise ineligible.

K. Owner shall adhere to the detailed construction schedule attached hereto as **Exhibit B**. This construction schedule establishes construction activities and expenditure timelines that Owner certifies it will meet under this Agreement. At a minimum the construction schedule shall address construction activities that meet the following expenditure timelines:

1. Owner shall expend 100% of the total amount of TCAP Funds awarded for eligible costs by November 15, 2010. In the event that Owner does not expend 100% of the total amount of TCAP Funds awarded for eligible costs by November 15, 2010, Owner forfeits any and all claim to the remaining, undisbursed amount of the TCAP Funds awarded to Owner pursuant to this Agreement and Owner agrees to repay ADFA the total of all TCAP Funds previously disbursed to Owner unless ADFA extends such expenditure deadline, in writing. ADFA retains the discretion to de-obligate any portion of and/or all TCAP Funds awarded to a Development if the Development has not expended or incurred 50% of the total TCAP Funds awarded for eligible costs within 180 days of the date ADFA issues the "Notice to Proceed" to Owner.

2. Owner certifies it shall place the Development in service no later than the earlier of the time required under Section 42 based upon the year of allocation of credits to Owner or December 31, 2011.

L. No part of the developer fee may be paid, from any source of funds, except to the extent set forth herein. Owner may request as a part of its regular draw request, disbursement of funds for payment of/or reimbursement of developer fee. Such request must be equal to or less than the amount of non-deferred developer fee that is the same proportion that the current draw request amount, not including the developer fee, is to the total TCAP and Section 1602 Exchange Funds amount awarded to Owner for Development.

M. Owner covenants that Owner and the Development will comply with all provisions of Section 42 of the IRC and all related regulations and agency guidance. Owner covenants that it will not take or permit any action that would result in a violation of the requirements of Section 42 of the IRC, the regulations promulgated thereunder, the American Recovery and Reinvestment Act ("ARRA"), the American Recovery and Reinvestment Tax Act ("ARRTA"), guidance and regulations issued thereunder or otherwise associated, and the provisions of this Agreement. Further, Owner covenants to take any required action, including amendment of this Agreement, as may be necessary, in the opinion of ADFA, to comply with Section 42 and all applicable regulations, rules, and procedures of the Internal Revenue Service or the United States Department of Treasury. In the event that ADFA determines that the Development is not in compliance with the rent and occupancy requirements of Section 42 of the IRC, and the Owner, upon written notification by ADFA, does not take immediate steps to correct such non-compliance, ADFA shall be entitled to take such actions as it deems necessary to enforce the provisions of Section 42 of the IRC, the ARRA, the ARRTA, all related regulations and guidance, and this Agreement, as more particularly set forth in, but not limited to, Sections V, X and XI.

## II. PROJECT FUNDING

A. ADFA hereby approves the award of TCAP Funds in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to the Owner as owner of the Development. Owner's current contact information is set forth in Section VI, *infra*.

B. Owner shall provide a detailed budget, acceptable to ADFA, indicating usage of all funds in the Development budget, including but not limited to the TCAP Funds awarded under this Agreement. Attached hereto as **Exhibit C** is Development's Final Sources and Uses Statement, which includes the total project Development costs, total amount of TCAP Funds, total federal low-income housing tax credit equity, and all other sources of funds.

C. Owner shall ensure that TCAP Funds provided under this Agreement will be requested for payment only in required amounts and as needed for payment of eligible costs. The amount requested cannot exceed actual costs incurred, meaning, they cannot be placed in escrow accounts or advanced prior to the Owner actually incurring or expending the amount requested. Funds will be disbursed by ADFA for only eligible costs incurred or expended by Owner, and will not exceed actual cash requirements. ADFA reserves the right to liquidate funds available under this Agreement for eligible costs incurred by ADFA on behalf of Owner.

D. (i) Owner shall not utilize disbursed TCAP Funds for payment of any costs other than those costs specified in the draw request and certified to by Owner, Owner's Certified Public Accountant or attorney as constituting eligible costs.

(ii) Owner shall make its accounting records, including but not limited to all computerized accounting systems, invoices, and reports, available for review by ADFA and ADFA's agent(s) at any time.

E. Owner shall complete the Development, including all acquisition, rehabilitation and new construction, and place the Development in service as defined by Section 42 of the IRC and accompanying legislation, regulations and agency guidance, by December 31, 2011. If any federal low-income housing tax credits were allocated to the Development in any year other than 2009, Owner certifies that it will comply with all placed-in-service requirements under Section 42 of the IRC for the appropriate allocation year. In the event that the Development is not placed in service by the earlier of the time required under Section 42 of the IRC, or December 31, 2011, Owner shall forfeit all claim to TCAP Funds awarded to Owner pursuant to this Agreement and shall repay to ADFA all TCAP Funds disbursed to Owner pursuant to this Agreement.

F. TCAP Funds provided under this Agreement will be in the form of a repayable loan, as evidenced by a Promissory Note ("Note"), at zero percent (0%) interest for a term of years corresponding to the affordability period to which Owner has committed as set forth in Section III.A. herein. Loan repayments will begin three years after the date the Development has been placed in service and shall be payable in monthly installments in an amount equal to one half (½) of Owner's monthly Surplus Cash not to exceed the monthly amount due as set forth in the Promissory Note. "Surplus Cash" shall mean the operating income of the Owner's Development which exceeds operating expenses. "Operating expenses" shall include salaries of on-site property managers, management fees, developer's fee, accounting services, loan repayments, amounts deposited into a replacement account, travel expenses, legal services, insurance expenses, taxes, advertising, grounds maintenance, utility expenses, office supplies,

rental (not purchase) and maintenance of office space, each of which must be specifically related to the Development. All accrued and unpaid principal shall be due on the Maturity Date set forth in the Promissory Note. Owner shall provide to ADFA annual audited financial statements of the Development from which ADFA can determine the Owner's Surplus Cash as defined herein. Failure to submit such annual audited financial statement will convert the Promissory Note from a note payable based upon "Surplus Cash" into a note payable in equal monthly payments as set forth in the Promissory Note.

G. The Note shall be secured by a Mortgage, Security Agreement, Assignment of Rents and Profits, Fixture Filing and Financing Statement encumbering the Development in favor of ADFA. The Note shall be subordinated to the notes of other parties providing financing for the Development. The entire outstanding principal balance of the loan shall be due and payable upon sale of the Development or any portion thereof during the applicable affordability period, except that subsequent purchasers of the Development may be approved by ADFA, provided that the subsequent purchaser agrees to: 1) enter into an agreement with ADFA to own and operate the Development as affordable rental housing for the remaining term of the affordability period, and 2) abide by all applicable TCAP Program and Section 42 of the IRC requirements.

H. As consideration for the TCAP Funds granted herein, Owner warrants that the Development will be acquired and rehabilitated or constructed in accordance with all representations made by Owner, with all applicable federal laws, regulations and agency guidance, with all ADFA requirements, with all State of Arkansas laws, regulations and agency guidance. Owner acknowledges that in exchange for the TCAP Funds awarded herein, ADFA shall have a mortgage on the Development and the General Partner of Owner, shall execute a Guaranty in favor of ADFA for the full amount of the TCAP Funds. All members or partners of the General Partner of Owner or other person(s) or entity(ies) whom ADFA finds acceptable, shall each execute a Guaranty in favor of ADFA for its share of the full amount of the TCAP Funds in proportion to their share of interest in the General Partner (collectively, "Guarantor"). Owner acknowledges that ADFA has full recourse against the Development and Owner in the event that any recapture event occurs, as set forth by guidance issued by the United States Treasury.

I. If for any reason, Owner breaches any term of this Agreement, ADFA is entitled to require full repayment of any amounts advanced under this Agreement pursuant to Section X, Remedies on Default, and pursue any and all other remedies available to it under this Agreement, LURA (as hereinafter defined), mortgage, promissory note, federal law, state law, and any and all other agreements between Owner and ADFA.

J. TCAP Funds to be provided under this Agreement are contingent upon ADFA's determination to proceed, modify or cancel the project based on the results of an environmental review in accordance with HUD CPD Notice 01-11 and CPD-09-03 Revised. Owner shall not commence, or continue, any acquisition, rehabilitation or new construction of the Development until ADFA has completed its environmental review, HUD has issued to Owner an Authority to Use Grant Funds, and ADFA has issued to Owner a Notice to Proceed.

### **III. AFFORDABILITY**

A. All housing developed with funding provided under this Agreement shall remain affordable and available to low-income persons as defined within this Agreement and in compliance with all income, rent or other applicable restrictions for a period of \_\_\_\_\_ (\_\_\_\_) **years**, (the “affordability period”). The affordability period begins on the first day of the “Compliance Period”, as that term is defined at 26 U.S.C. § 42(i)(1), for any building in the Development.

B. If the Development does not meet the applicable affordability requirements for the full compliance period for any reason whatsoever, the total amount of TCAP Funds disbursed to the Owner pursuant to this Agreement must be repaid to ADFA. If the Development does not meet the applicable affordability requirements at any time after the 15-year compliance period ends, ADFA is entitled to seek injunctive relief to enforce the provisions of this Agreement and any and all other remedies to which it is entitled under this Agreement, associated agreements and documents, federal law and state law.

C. Owner shall ensure that the affordability requirements are met for the full affordability period through deed restrictions and all other necessary documentation and mechanisms. At a minimum, affordability requirements shall be enforced by ADFA via a deed restriction encumbering the Development for the full affordability period. Prior to any payment of TCAP Funds, Owner shall cause a Land Use Restriction Agreement (“LURA”), approved and executed by ADFA and Owner, to be filed in the real property records of the County in which the Development herein is located. Such Land Use Restriction Agreement must be binding on all owners, and successors and be enforceable by ADFA, HUD and residents of the Development. Further, all requirements of this Agreement shall be enforceable by such Land Use Restriction Agreement.

### **IV. ASSET MANAGEMENT**

A. All asset management duties will be performed by a third-party asset management company, approved by ADFA, (hereinafter “Asset Manager”), which will report to ADFA.

B. Owner agrees to cooperate fully with the Asset Manager and ADFA in providing all requested information, developing and maintaining policies required by the Asset Manager and ADFA and all other activities and responsibilities to ensure that the Asset Manager and ADFA have full and complete access to all financial records of the Owner, the Development and all related persons and entities. Owner agrees that it will implement and maintain all policies, practices and actions that are required by the Asset Manager and ADFA for the operation of the Development to ensure the long-term viability of the Development, including but not limited to maintenance and amount of operating and replacement reserves, selection and utilization of property management personnel and companies, refinancing of debt, and restructuring of debt and equity.

C. Owner shall be liable for the payment of all fees, costs and expenses charged by the Asset Manager for its asset management services provided to the Development. Owner shall not utilize TCAP Funds to pay for such asset management fees, costs and expenses in whole or in part.

D. Owner shall establish a Replacement Reserves account with an initial balance of two hundred and fifty dollars (\$250.00) per unit in the Development, including all restricted units, all market rate units and all manager/employee units. Owner must make annual deposits throughout the affordability period to the Replacement Reserve account in the amount of \$250.00 per unit in the Development. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. The balance of the Replacement Reserve account may not at any time be less than the total of two (2) years deposits calculated as set forth above. A copy of the bank account statement evidencing the monthly balance of the operating reserve funds account must be provided to the Asset Manager on a monthly basis.

E. (i) Owner shall establish an operating reserves account with an initial balance of not less than the sum of six (6) months of:

1. Annual operating expenses as represented in Owner's pro forma financial statement;
2. Annual debt service payments; and
3. Annual replacement reserve deposits.

(ii) Owner must maintain such an account throughout the compliance period. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. A copy of the bank account statement evidencing the monthly balance of the operating reserve funds account must be provided to the Asset Manager on a monthly basis.

(iii) The Operating Reserve account must be replenished to the amount set forth above within six (6) months of any withdrawal. Owner must provide the Asset Manager with evidence of such replenishment by the earlier of 1) ten business days after the date of the last deposit which increased the Operating Reserves account to an amount equal to the amount set forth above, or 2) the tenth business day of the seventh month after the date of the withdrawal. This requirement shall apply separately to each and every withdrawal from the Operating Reserve account.

F. Owner shall provide within ten (10) calendar days any and all information, records, documentation and reports requested by ADFA or the Asset Manager.

G. (i) Owner shall maintain property hazard insurance for the Development in an amount sufficient to rebuild the Development in the same manner and quality as promised by Owner in exchange for the TCAP Funds. Owner shall cause ADFA to be named on the insurance policy as Mortgagee. ADFA is in no manner responsible for payment of the insurance premiums, notifying Owner of premiums due, notifying Owner of any other correspondence received by ADFA in regard to the insurance policy, or any other action or fiduciary duty. Owner understands that ADFA is not Owner's escrow agent and that Owner and ADFA have no fiduciary relationship. It is exclusively the Owner's responsibility to ensure that the Development is sufficiently insured at all times. ADFA has the right to purchase property hazard insurance for the Development and recover all costs for such insurance and the expense of obtaining such coverage from Owner. However, ADFA has no duty to perform this service.

(ii) Owner shall maintain liability insurance for bodily injury and automobiles owned, leased, or operated by Owner. Owner shall maintain insurance coverage for flood damage if the Development is located in the 100-year flood plain (FEMA Flood Zone A or any sub-designation of Zone A).

(iii) Owner shall maintain workers compensation insurance in accordance with all applicable Arkansas law.

(iv) Owner shall deliver Certificates of Insurance on an annual basis to ADFA and the Asset Manager evidencing all coverage and coverage limits provided to Development.

## V. UNIFORM PHYSICAL CONDITION STANDARDS

A. The Development shall, upon completion: 1) meet all representations made by Owner in its application(s) for receipt of tax credits and/or funding, including TCAP funding, from ADFA; 2) meet or exceed all applicable minimum design standards, as established by ADFA; 3) all federal and state accessibility requirements; 4) Fair Housing requirements; and 5) all applicable federal regulations, and all state and local housing, zoning, fire, and building codes, as amended, for the duration of the required affordability period.

B. Owner shall establish and maintain records for each housing unit in the Development, to ensure adherence to all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, and building codes, as amended. The Owner's compliance with all such standards will be verified by an inspection conducted by the Owner's construction lender, construction monitor or an ADFA inspector. The method of inspection to ensure maintenance of required housing standards for the full period of affordability will be in accordance with [24 CFR 92.504\(d\)\(1\)](#).

C. (i) ADFA or a third party monitor will perform construction monitoring during construction until the Development receives a certificate of occupancy from the local, applicable governmental unit. **Owner must notify ADFA a minimum of 48 hours in advance to schedule construction inspections.** Owner must fully cooperate with ADFA to facilitate construction inspections, reviews, and reporting requirements. No payment of TCAP Funds will be approved and no TCAP Funds will be disbursed to Owner in the event that a construction inspection was not performed after each stage identified above and prior to beginning work on the subsequent phase. **Exhibit B** must, at a minimum, identify construction inspections in accordance with the following stages of construction:

**Stage 1**

Excavation  
Footing and/or foundation  
reinforcement bar and wire mesh  
Termite treatment  
Rough-in plumbing  
Earth Work  
Water proofing (vapor barrier)  
Footing  
Slab

**Stage 3**

Flooring systems  
Painting  
Doors  
Cabinets  
HVAC  
Electrical top-out  
Special construction (elevators, etc.)  
Appliances

**Stage 2**

Plumbing  
Electrical rough-in  
  
Framing  
Roof  
Interior wall systems  
Exterior wall systems  
Ventilation  
Insulation

**Stage 4**

Final Inspection

(ii) In the event that construction financing is provided to Owner by a construction lender, Owner shall provide such lender's monthly inspection reports or cause the lender to provide such inspection reports directly to ADFA each month.

(iii) ADFA and all agents of ADFA reserve the right to inspect at any time during normal business hours any and all construction or rehabilitation accomplished under this Agreement to assure adherence to applicable Uniform Physical Condition Standards, ADFA's minimum design standards, all applicable federal laws and regulations, and all state and local housing, zoning, building and fire codes, as amended.

(iv) Owner shall reimburse ADFA for all fees, costs and expenses charged by the construction monitor, or incurred by ADFA, for its services provided on behalf of the Development. Owner agrees to provide each month, or request its construction lender to provide directly to ADFA, the construction lender's monthly construction report.

D. Owner shall use only Arkansas licensed contractors and subcontractors, reputable workmen, material suppliers and agents acceptable to ADFA in the construction, rehabilitation, marketing, and leasing of the housing units to be rehabilitated and/or constructed under this Agreement.

## **VI. NOTICES**

Communication and details concerning this Agreement shall be directed to the following persons:

Arkansas Development Finance Authority  
Multi-Family Housing Programs Manager  
P.O. Box 8023  
Little Rock, AR 72203  
(501) 682-5900

Name of Owner  
Contact Person  
Address of Owner  
Telephone Number of Owner  
Facsimile Number of Owner  
E-mail of Owner

The contact persons listed above may be changed upon fifteen (15) days' written notice to the other party.

## **VII. RECAPTURE**

A. Owner's breach of any provision of this Agreement may constitute an event that ADFA may, in its discretion, deem a recapture event.

B. In the event that a recapture event occurs, ADFA shall give Owner notice and an opportunity to return to compliance within thirty (30) days. If Owner does not return the Development and/or Owner to compliance within thirty days, ADFA shall require payment of the recapture amount. If, thereafter, the Development and/or Owner remains out of compliance for an additional thirty days, Owner shall be deemed to be in default of this Agreement and ADFA shall pursue all remedies available under this Agreement, federal and state law.

C. ADFA shall have full recourse against Owner and the General Partner of Owner for the full amount of recapture. ADFA shall have recourse against each member or partner of the General Partner of Owner limited up to the amount set forth in the Guaranty executed by each such partner or member. ADFA's interest shall be protected by a Mortgage filed in the real property records of \_\_\_\_\_ County, Arkansas, a promissory note, and Guaranties executed by the General Partner of Owner and a proportionate share of each member's or partner's interest in the General Partner of Owner or other person or entity whom ADFA finds acceptable.

F. Any amount subject to recapture shall become a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of Owner. Owner and the Guarantors shall be liable to ADFA and the United States Treasury for any and all amounts arising under this Agreement that ADFA is required to repay to Treasury, including any and all penalties, as more fully set forth in Section XIII and Section XIV of this Agreement.

## VIII. ADMINISTRATIVE REQUIREMENTS

A. Owner shall abide by all applicable federal, state, and local laws, regulations, codes, and ordinances in the performance of all activities required by this Agreement, and specifically agrees to adhere to applicable requirements of 26 U.S.C. § 42 and all accompanying legislation, regulations, Internal Revenue Service guidance, HUD Notice CPD-09-03, as amended, all interpretative guidance issued by HUD and all regulations promulgated by HUD.

B. Owner shall cause an independent cost certification audit of this Development to be performed within thirty (30) days of placing the Development in service. This audit shall be in accordance with generally accepted accounting principles and generally accepted auditing principles. An independent auditor acceptable to ADFA shall conduct the audit. The independent auditor shall provide ADFA with a copy of such audit upon its completion. Any deficiencies noted in the audit report shall be fully cleared by Owner within thirty (30) calendar days after receipt of the audit report by ADFA

C. Owner shall ensure compliance with the requirements of Title VII of the Civil Rights Act of 1968, [42 U.S.C. § 3601 et seq.](#) (**Fair Housing Act**), and implementing regulations at [24 CFR Part 100](#) and the regulations at [24 CFR Part 107](#) (Equal Opportunity in Housing). Owner shall ensure that the provisions of this paragraph are included in every subcontract entered into by Owner associated with this Agreement and Development. Owner shall ensure maintenance of records and reports to document compliance with fair housing and equal opportunity requirements.

D. Owner shall comply with **Title VI of the Civil Rights Act of 1964**, [42 U.S.C. § 2000\(d\)](#) (Nondiscrimination in Federally Assisted Programs), as amended, and implementing regulations at [24 CFR Part 1](#), as amended.

E. Owner shall comply with **The Age Discrimination Act of 1975**, [42 U.S.C. §§ 1601 – 1607](#) (Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance), as amended, and implementing regulations at [24 CFR Part 146](#), as amended.

F. Owner shall **affirmatively market** all restricted housing units developed under this Agreement to low-income persons in compliance with Public Laws 88-352 and 90-284 and ensure maintenance of documentation of affirmative marketing efforts to such persons. Prior to any funds being disbursed under this Agreement, Owner shall submit an affirmative marketing plan to ADFA documenting the planned affirmative marketing efforts to be undertaken by Owner regarding the Development. Affirmative marketing efforts detailed in the Owner's affirmative marketing plan must include:

1. Methods for informing the public and potential tenants about fair housing laws and the policies of the local program;

2. A description of what the Owner will do to affirmatively market housing units in the Development;

3. A description of what the Owner will do to inform persons not likely to apply for housing without special outreach;

4. Maintenance of records to document actions taken to affirmatively market housing units in the Development and to assess marketing effectiveness; and

5. A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

G. Owner shall comply with **Section 504 of the Rehabilitation Act of 1973**, [29 U.S.C. § 794](#), as amended, and implementing regulations at [24 CFR Part 8](#) (Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development), as amended.

H. Owner shall comply with the provisions of the **National Environmental Policy Act of 1969**, as applicable to the Development, the Flood Disaster Protection Act of 1973, and the regulations promulgated thereunder, all as amended as applicable, in particular [24 CFR § 58.6](#). Owner agrees to comply with the following regulations insofar as they apply to this Agreement, the Clean Air Act, Federal Water Pollution Control Act, Environmental Protection Agency regulations pursuant to [40 CFR Parts 1 - et seq.](#), all as amended, as well as all other applicable environmental laws and regulations, as applicable. Owner shall ensure maintenance of documentation to evidence compliance with environmental statutes and regulations.

I. Owner shall comply with **The Lead-Based Paint Poisoning Prevention Act** and **The Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at [24 CFR Part 35](#). In addition, Owner shall have knowledge of and comply with HUD's "[Interpretative Guidance on Lead-Based Paint for Tax Credit Assistance Program](#)" and "[Lead Safe Housing Rule for Target Housing](#)." Owner shall complete the following certifications:

1. \_\_\_\_\_ Owner certifies that the Development was constructed after 1977 and is accordingly exempt from the Lead Safe Housing Rule.

2. \_\_\_\_\_ Owner certifies that the Development was constructed prior to 1978 and that no executed construction contract existed for the rehabilitation of the Development at the time that HUD and ADFA executed the TCAP grant agreement. Owner further certifies that it will comply with all applicable rules and regulations, including but not limited to all pre-contract requirements set forth in 24 C.F.R. Part 34, Subpart A, Subpart B, Subpart J, Subpart K, and Subpart R and HUD's Interpretive Guidance on Lead-Based Paint for Tax Credit Assistance Program.

3. \_\_\_\_\_ Owner certifies that the Development was constructed prior to 1978 and that an executed construction contract existed for the rehabilitation of the Development at the time that HUD and ADFA executed the TCAP grant agreement. Owner further certifies that it will comply with all applicable rules and regulations, including but not limited to all post-contract requirements set forth in 24 C.F.R. Part 34, Subpart A, Subpart B, Subpart J, Subpart K, and Subpart R and HUD's Interpretive Guidance on Lead-Based Paint for Tax Credit Assistance Program.

4. \_\_\_\_\_ Owner certifies that it will not use TCAP Funds to pay any costs of complying with 24 CFR Part 35, other than for costs of lead hazard evaluation, lead hazard reduction, and clearance activities.

J. Owner shall ensure that it will comply with all requirements of the **Davis-Bacon Act**, [40 U.S.C. § 3141 et seq.](#), [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards. Owner will further ensure that all contractors, subcontractors, and any other construction employer performing construction services for the Owner will comply with all requirements of the **Davis-Bacon Act**, [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards.

1. Owner certifies it will insert and incorporate the applicable [Davis-Bacon Wage Decision](#) and the [HUD 4010](#), “Federal Labor Standard Provisions”, into any construction contract in which it enters that is subject to Davis-Bacon requirements. Owner certifies that it will ensure any construction contract entered into by any contractor, subcontractor or other construction employer performing construction services for the Owner will include and incorporate the applicable Davis-Bacon Wage Decision and the HUD 4010 into such construction contract. Owner certifies it will retrieve the appropriate Davis-Bacon Wage Decision at <http://www.wdol.gov/>. A copy of HUD 4010 is attached hereto at **Exhibit D** and is incorporated herein by reference.

2. Owner shall ensure maintenance of adequate records and reports to evidence compliance with all requirements of the **Davis-Bacon Act**, 40 U.S.C. § 3141 et seq., [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards.

a. Owner will ensure each contractor, subcontractor and any other construction employer performing construction services for the Owner will: *i*) prepare and certify a weekly payroll report for each week the contractor, subcontractor or other construction employer that performs construction services on the Development, and *ii*) retain a copy of all payrolls and basic records related to the payroll information such as employee information, timecards, pay and deduction records, etc.

b. Owner will ensure payroll reports and records enumerated in subparagraph J.2.a., immediately above, are, on a weekly basis, cumulatively submitted up the “chain of command” until final submission to ADFA. (Up the “chain of command” means that lower-tier subcontractors will submit payroll reports and records to subcontractors; subcontractors will submit lower-tier subcontractor payroll reports and records along with their own payroll reports and records to the principal contractor; the principal contractor will submit all lower-tier subcontractor and subcontractor payroll reports and records along with its own payroll reports and records to the Owner. The Owner will submit all lower-tier subcontractor, subcontractor, principal contractor payroll reports and records along with its own payroll reports and records to ADFA.

c. Owner will receive a certification from each construction employer, at whatever level described in subparagraph J.2.b. that performs construction services on the Development that it will retain the payroll reports and records enumerated in subparagraph J.2.a. for a period not less than three (3) years after the Development has placed in service.

3. Owner shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Owner shall cause the applicable provisions of this Agreement to be included in, and made a part of, any subcontract executed in the performance of this Agreement. Executed copies of all subcontracts entered into by Owner shall be available for review by ADFA, along with documentation concerning the selection process.

4. Owner shall provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988.

5. Owner shall ensure that where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, said employees shall not be required or permitted to work, be trained in, or receive services in buildings or surroundings, or under working conditions, which are unsanitary, hazardous, or dangerous to the participants' health or safety.

K. Owner certifies that it will comply with the requirements of [24 CFR Part 87](#). Owner further certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form–LLL](#), “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The language of the “Certification for Contracts, Grants, Loans, and Cooperative Agreements,” attached hereto as **Exhibit E** will be included in the award documents for all contracts, including subcontracts, made pursuant to this Agreement. The language of the “Certification” is a material representation of fact, thus, Owner will ensure all principal contractors, subcontractors, and lower-tier subcontractors will execute said “Certification” prior to making any payment for services rendered for the benefit of the Development.

L. Owner shall not award any contract to a contractor who is debarred, suspended or otherwise excluded from or ineligible for participation in any federal assistance program. *See, /.* Owner must comply with [subpart C of 2 CFR Part 180](#) as required by [2 CFR Part 2424](#).

Owner shall require and ensure that all contractors, sub-contractors, and all other persons performing work under contracts funded in any part by TCAP Funds, Exchange Funds, or other funds provided under the American Recovery and Reinvestment Act, register with [www.FederalReporting.gov](http://www.FederalReporting.gov) and report on the use of the funds in accordance with 74 Federal Register 42877 and 74 Federal Register 48971.

M. Owner shall ensure that project signage for the Development is posted in a manner consistent with criteria established for projects funded in whole or in part with TCAP Funds and any other American Recovery and Reinvestment Act funds.

If applicable, Owner shall adhere to the requirements of [OMB Circular No. A-122](#), [OMB Circular No. A-133](#), [OMB Circular No. A-110](#), and [24 CFR Part 84](#).

N. Owner shall make available to ADFA at any time during normal business hours all financial, compliance and rehabilitation records of activities pertaining to funding the Development covered by this Agreement to allow ADFA to conduct monitoring, performance, and compliance reviews and evaluations. Notwithstanding any other provision in this Agreement, ADFA will monitor the performance of Owner against the activities described in this Agreement. Substandard performance as determined by ADFA shall constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by Owner within thirty (30) calendar days after being notified by ADFA, suspension or termination procedures may be initiated as specified in Section IX, X, and XI.

O. Owner shall establish and ensure the eligibility of tenants leasing housing developed under this Agreement with regard to program requirements specified by the Department of Housing and Urban Development, the United States Treasury and the Internal Revenue Service. In addition, Owner shall ensure maintenance of beneficiary information regarding persons assisted under this Agreement, including name, address, family size, social security number, race, sex, income, marital status, and whether the assisted person(s) is elderly, female head-of-household, handicapped, American Indian or Alaska Native, Hispanic, Caucasian, Black or African American, Asian, or Native Hawaiian or Pacific Islander. The information shall be maintained for each housing unit and person(s) or families assisted under this Agreement. Owner shall submit the beneficiary information to ADFA upon request.

P. Owner shall comply with Executive Order 11063, as amended by Executive Order 12259, and shall not discriminate against persons on the basis of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital or familial status, or status with regard to public assistance. Owner shall maintain records and documentation to evidence compliance with this requirement. Owner shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

Q. Owner agrees that funds received under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

R. Owner shall not further encumber the Development except as provided in this Agreement, without the prior written approval of ADFA.

## **IX. RECORDKEEPING AND REPORTS**

A. Owner shall provide all information requested by ADFA in a timely manner to enable ADFA to meet all reporting requirements imposed by HUD, any other United States government agency or entity, or the State of Arkansas.

B. Beginning with the first calendar month in which the Agreement is executed, the Owner will submit the payroll reports and records described in **Section VI.J.2.b**, above, to ADFA no later than 10 business days following the last day of each calendar month. Owner must submit such monthly payroll reports and records to ADFA through the month in which the Development is placed in service.

C. Beginning with the first calendar month in which this Agreement is executed, Owner must submit a monthly report in the format that will be prescribed by ADFA due to ADFA on the 1<sup>st</sup> business day following the end of each calendar month. Owner must submit such monthly reports to ADFA through the month in which the Development is placed in service. At such time, the reporting frequency and content may be revised by ADFA. The monthly report shall be in the form attached hereto as **Exhibit F**.

D. Owner will ensure that all records required under this Agreement are retained for a period of five (5) years after the applicable required period of affordability has expired. When requested, Owner shall furnish, and cause all its subcontractors to furnish, all reports and information required hereunder, and will permit access to its books, records, and accounts, by ADFA, the Department of Housing and Urban Development or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the statutes, rules, regulations, and provisions stated herein.

## **X. DEBARMENT AND SUSPENSION**

Owner certifies that the Owner and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transactions by any federal department or agency;

B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, making false statement(s) or receiving stolen property;

C. Are not presently indicted for or otherwise criminally charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above, and;

D. Have not within a three (3) year period preceding this Agreement had one (1) or more public transactions (federal, state or local) terminated for cause or default.

## **XI. REMEDIES ON DEFAULT**

Owner agrees that in the event that ADFA determines that a breach of this Agreement has occurred, including but not limited to Owner expending TCAP Funds for ineligible costs, failing to complete the Development within the time specified herein, failing to ensure that the Development meets all requirements of Section 42 and this Agreement, or failing to expend the TCAP Funds by the time specified herein, ADFA may exercise any and all of its rights and remedies under this Agreement, state and federal law, and all applicable regulations, including the right to terminate this Agreement and recapture or terminate any and all TCAP Funds allocated under this Agreement. More specifically:

A. If ADFA determines that Owner has materially failed to comply with any provision of this Agreement, or with any rules, statutes, regulations, or ordinances, ADFA will notify Owner in writing by certified mail, return receipt requested, such Notice of Default to the party designated to receive such Notices in **Section VI** of this Agreement. For purposes of this section, the term materially means "an important or essential term of the Agreement." "Material" necessarily includes but is not limited to any action or inaction by Owner that constitutes a recapture event pursuant to HUD and/or Treasury guidance.

B. ADFA will allow Owner the opportunity to demonstrate compliance with the Agreement requirements in question. Owner may offer evidence of such compliance within thirty (30) days from receipt of the written Notice of Default. Any such offered evidence of compliance shall not constitute compliance with the terms and conditions of this Agreement unless ADFA expressly makes a finding in writing that the offered evidence demonstrates compliance with the Agreement requirement(s) in question.

C. If Owner fails to demonstrate to ADFA that it has fulfilled the requirement(s), ADFA may provide Owner with Notice of Default. ADFA may take any of the special conditions specified in [24 CFR 84.14](#), take any and all of the following "corrective or remedial" actions, or may terminate this Agreement and demand repayment of the full amount of TCAP Funds disbursed to Owner under this Agreement and all other remedies to which it is entitled under this Agreement, federal and state law, whether or not it has exercised in the Notice of Default its right to take any of the corrective or remedial actions set forth herein, which include, but are not limited to:

a. Withholding further disbursements pending correction of the deficiency by Owner.

b. Require additional information from Owner to verify the nature of a deficiency and adverse effects.

c. Specific activities required by ADFA to correct the deficiency and to be accomplished by Owner in a specified time frame.

d.. Canceling or revising activities may affect the performance of this Agreement and create a deficiency in the original Agreement and may be grounds for making this contract void, and trigger remedies available to ADFA under this Agreement and/or TCAP Program regulations.

e. Reprogramming any balance of TCAP Funds made available under this Agreement from deficient activities, or any activity funded under this Agreement, to other eligible activities.

f. Suspension of TCAP fund disbursements for any activities funded under this Agreement and subsequent termination of this Agreement in its entirety.

g. Termination of this Agreement in its entirety and requiring that the Owner repay to ADFA any and all TCAP Funds received by Owner under this Agreement.

h. Removing Owner, principals of Owner, members of Owner's development team, and/or other individuals and entities, at the discretion of ADFA, from future participation in programs administered by ADFA.

i. Requiring that Owner terminate the management company. Owner agrees to hold ADFA harmless for any damages or claim for damages caused or alleged to have been caused by this requirement. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.

j. Requiring that Owner engage a management company selected by ADFA to provide management services for the Development. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.

k. Taking any and all other actions that are available to ADFA under this Agreement, all other relevant contractual agreements, applicable regulations, federal law and state law.

D. ADFA is not required to take any corrective or remedial action before terminating this Agreement. The Notice of Default may constitute prior written notice to the Owner under Section XI unless ADFA sets forth corrective or remedial actions in the Notice of Default that may be taken by Owner. A separate Notice of Termination will be issued by ADFA, in their sole discretion, and at any time ADFA determines the breach(es) has/have not been cured by the corrective or remedial action.. It is within ADFA's sole discretion whether to require corrective or remedial actions, or to terminate the Agreement without requiring, or providing Owner the opportunity to take, corrective or remedial actions.

E. ADFA is not required to take any corrective or remedial action before pursuing all legal and equitable rights to which it is entitled.

F. In the event Owner dissolves the organization, ceases to exist, sells its ownership interest, sells substantially all assets of Owner, or otherwise becomes unable for any reason to fulfill its obligations under this Agreement, Owner must fully repay to ADFA all TCAP Funds disbursed to Owner pursuant to this Agreement unless ADFA has agreed otherwise, in writing.

G. Notwithstanding any other provision of this Agreement, should there be any fraud, misrepresentation, embezzlement, or any other criminal activity associated with this Development or Owner, ADFA may pursue all legal and equitable remedies available to it against the Owner and the Development.

H. Any decision regarding corrective or remedial actions, termination, legal or equitable remedies or actions to be taken regarding this Agreement or Development shall be at the sole option and discretion of ADFA. A decision by ADFA to pursue one course of action shall not constitute a waiver of any other course of action ADFA may pursue under this Section XI, Remedies on Default.

I. In the event that legal action is necessary to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs.

## **XII. TERMINATION**

ADFA may terminate this Agreement upon thirty (30) days prior written notice to the Owner contact person indicated in Section VI of this Agreement. A Notice of Default is sufficient notice to Owner that this Agreement will be terminated, unless corrective or remedial action is set forth therein. The notice of termination shall set forth the reasons for such termination, the effective date of termination, and in the case of partial termination, the portion of the award to be terminated. However, in the case of partial termination, if ADFA, in its sole discretion, determines that the remaining portion of the funding provided under this Agreement will not accomplish the purposes for which the award was made, the ADFA may terminate the award in its entirety.

## **XIII. MISCELLANEOUS PROVISIONS**

A. The officials who executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of ADFA and Owner, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

B. This Agreement shall be executed in the original, and any number of executed copies. Any copy of this Agreement so executed shall be deemed an original and shall be deemed authentic for any other use.

C. The parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the parties from their obligations under this Agreement.

D. The terms and conditions of this Agreement shall be binding upon the parties hereto, their respective successors and assignees.

E. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the parties. Owner shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Further, nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of principal and agent between the parties.

F. Owner shall not assign or transfer any interest in this Agreement without the prior written approval of ADFA.

G. This Agreement shall be construed according to the laws of the State of Arkansas.

H. Any and all suits at law or equity arising out of this Agreement must be filed in the Circuit Court of Pulaski County, Arkansas. By execution of this Agreement, Owner consents to the personal jurisdiction of Arkansas for all matters arising from the application for TCAP funding, award of TCAP funding, this Agreement, construction of the Development and operations of the Development.

I. Should any part, term or provision of this Agreement, or portions thereof, be determined by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby.

J. The use of the singular or plural is for the parties' convenience only and shall not be construed as limiting or expanding any authority, duty, or liability.

K. Owner hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise relating directly or indirectly to this Agreement, the associated Mortgage, Note and Land Use Restriction and all other related documents, representations and agreements, for any acts or omissions of Owner, its officers, members, partners, employees, directors and agents.

L. Owner shall not engage in any business other than owning and operating the Development.

M. Owner shall not file or consent to a petition of bankruptcy, insolvency, liquidation or reorganization, or make assignment for the benefit of creditors without providing actual notice to ADFA and obtaining ADFA's written consent to any action prior to Owner taking or agreeing to such action.

N. Owner waives all right to request a qualified contract pursuant to Section 42(h)(6)(I) of the IRC.

O. Owner understands and agrees that Owner has exclusive responsibility for compliance with all applicable program requirements. Owner understands and agrees that ADFA is neither Owner's legal counsel nor tax advisor and that ADFA and Owner have no fiduciary relationship.

P. Owner understands and agrees that all information, documents, records and other such items may be considered public information and may be subject to public review. Owner shall not object to the release by ADFA of any submitted information, documents, records or other such items in the event that ADFA legal counsel determines that such disclosure is permissible under federal and state law.

Q. Owner has not relied upon any representations made by ADFA or its agents that are not expressed in this Agreement.

R. This Agreement shall not be considered merged upon the closing of the Mortgage and all terms and conditions set forth herein, whether or not set forth in the Mortgage, shall survive the closing of the Mortgage

#### **XIV. INDEMNITY**

Owner agrees that it shall defend, indemnify and hold harmless ADFA, its officers, agents, directors and employees from and against any and all claims, liabilities, damages, losses, injuries, costs, expenses, suits and actions arising from this Agreement, including but not limited to:

A. Any and all claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this Agreement.

B. Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of Federal, State, and local statutes or regulations, by Owner, its officers, employees or subcontractors in the performance of this Agreement.

C. Any and all claims or losses arising from the Development's award of tax credits, any return of tax credits, award of TCAP funding, construction and operation.

D. Any and all claims or losses arising from the award and distribution of TCAP Funds to Owner for which the Department of Housing and Urban Development seeks repayment, damages or other compensation from ADFA.

E. Owner agrees to pay all reasonable attorneys' fees and costs incurred by ADFA in defending any and all claims arising out of this Agreement brought against ADFA by any person, entity or governmental body.

No part of the above provision shall be construed to waive A.C.A. §21-9-301.

#### **XV. RECOURSE**

It is expressly understood by the parties hereto that ADFA shall have full recourse against Owner and the General Partner of Owner for breach of this Agreement. It is further understood that each member or partner of the General Partner of Owner shall be directly liable to ADFA for the amount of TCAP Funds awarded herein that is equal to the member's or partner's percentage of ownership interest in the General Partner. A copy of each Guaranty shall be included hereto and incorporated herein by reference as if set forth word for word.

## **XVI. TIME OF PERFORMANCE**

Owner shall commence construction [rehabilitation] of the Development within one-hundred twenty (120) days of the date ADFA issues the Notice to Proceed. In the event that construction does not begin within said time period, or the project is not complete by said time, ADFA may, at its sole discretion, terminate this Agreement. Any extension of time permitted by ADFA shall not be considered a waiver of this time of performance requirement and shall not affect ADFA's right to terminate this Agreement in any way except as set forth in writing and signed by the President of ADFA.

Owner shall complete construction and place the Development in service by the earlier of the time required under Section 42 of the IRC or December 31, 2011. Owner agrees to fully cooperate with all construction monitoring by a third-party or ADFA personnel. In the event that Owner fails to comply with the construction schedule and ADFA determines that any such construction delay jeopardizes the completion of the Development by the time specified herein,, attached hereto as **Exhibit B** and incorporated herein by reference, ADFA shall have the right to terminate this Agreement and recover all TCAP Funds previously disbursed to Owner.

## **XVII. TERM OF AGREEMENT**

This Agreement shall be in full force and effect from the date first written above and shall remain in force for the full period of affordability applicable to the Development.

**This space left blank intentionally.**

## **XVIII. SURVIVAL**

This Agreement shall not be considered merged upon the closing of the Mortgage loan, and all terms and conditions set forth herein, whether or not set forth in the Mortgage, shall survive the closing of the Mortgage loan.

ADFA:

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: \_\_\_\_\_  
Mac Dodson, President

Date: \_\_\_\_\_

Federal Identification Number: 71-0503641

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**

**CONSTRUCTION SCHEDULE**

**EXHIBIT C**

**DEVELOPMENT'S FINAL SOURCES AND USES STATEMENT**

**EXHIBIT D**  
**HUD FORM 4010**

**Federal Labor Standards Provisions**

**U.S. Department of Housing  
and Urban Development**  
**Office of Labor Relations**

---

**Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

---

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## **EXHIBIT E**

### **CERTIFICATION OF CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

The language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**EXHIBIT F**

**MONTHLY REPORT**